WYOMING OUTDOOR COUNCIL, ET AL.

IBLA 96-67 Decided December 22, 1998

Appeal from a Decision of the Deputy State Director, Minerals and Lands, Wyoming, Bureau of Land Management, affirming a decision approving the BTA Oil Producers Bravo Field Development and the HS Resources, Inc. Natural Gas Exploration Project. SDR WY-95-09.

Affirmed.

1. Environmental Quality: Environmental Statements–National Environmental Policy Act of 1969: Environmental Statements–National Environmental Policy Act of 1969: Finding of No Significant Impact–Oil and Gas Leases: Drilling

   A Decision approving two natural gas drilling projects on Federal lands, absent preparation of an environmental impact statement, will be affirmed when BLM has taken a hard look at the environmental consequences of doing so in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, and appellants have not demonstrated that BLM failed to adequately consider a substantial environmental problem of material significance.

APPEARANCES: Debra Asimus, Esq., and Robert Wiygul, Esq., Sierra Club Legal Defense Fund, Inc., Denver, Colorado, for the Wyoming Outdoor Council, et al.; John F. Shepherd, Esq., and Jane L. Montgomery, Esq., Denver, Colorado, for Intervenor BTA Oil Producers; James M. Piccone, Esq., HS Resources, Inc., Denver, Colorado, and Charles L. Kaiser, Esq., and Charles A. Breer, Esq., Denver, Colorado, for Intervenor HS Resources, Inc.; Laura Lindley, Esq., Denver, Colorado, for Intervenor Lario Oil & Gas Company; Andrea S.V. Gelfuso, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Denver, Colorado, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE KELLY

The Wyoming Outdoor Council, Wyoming Wildlife Federation, Wyoming Wilderness Association, Biodiversity Associates/Friends of the Bow, and Sierra Club Wyoming Chapter (Appellants) have appealed from an October 6,

1995, Decision of the Deputy State Director, Minerals and Lands, Wyoming, Bureau of Land Management (BLM). Other parties to the case include BTA Oil Producers (BTA), Lario Oil & Gas Company (Lario), and HS Resources Inc. (HS), who were granted leave to intervene by our Order of January 17, 1996. We denied Appellants' Petition to Stay the effect of the Decision pending appeal by Order of March 29, 1996.

The Deputy State Director's Decision affirmed the July 20 and August 4, 1995, Decision Records/Findings of No Significant Impact (DR/FONSI's) of the Assistant Area Manager, Green River Resource Area, approving, respectively, the BTA Oil Producers Bravo Field Development (BTA Project) and the HS Resources, Inc. Natural Gas Exploration Project (HS Project). The Decision also affirmed the Assistant Area Manager's finding that, based on the Environmental Assessment (EA) prepared for each project, BLM was not required by section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. § 4332(2)(C) (1994), and its implementing regulations, to prepare an Environmental Impact Statement (EIS) for either project. (BTA DR/FONSI at 3, 10; HS DR/FONSI at 4-5, 6.)

The projects are described as follows. The BTA Project would allow BTA to drill 10 natural gas development wells on its existing Federal oil and gas leases in the Alkali Basin area of Sweetwater County, Wyoming. The project would include three active existing wells, and would authorize constructing 5 miles of new road, drilling one water supply well, and constructing a natural gas processing plant, pipelines, and other facilities over a 5- to 10-year period. The 4,632-acre project area is adjacent to the East Sand Dunes Wilderness Study Area (WSA) and near three other WSA's (Red Lake, South Pinnacles, and Alkali Draw), all of which BLM has not recommended for designation as wilderness. A total of 180.6 acres of land would be disturbed in the short term by drilling, construction, and related activities, with 33.7 acres of continuing disturbance during operation of and production from the 10 wells.

The HS Project would provide for the drilling of three natural gas exploration wells in the Essex Mountain area of Sweetwater County, Wyoming, by HS and Lario under their existing Federal oil and gas leases. The project would involve the initial drilling of one exploratory well and, depending upon the success of that effort, two additional wells, and constructing pipelines and other facilities. These wells would be in addition to eight active and nine abandoned wells existing in the project area. The project would also involve constructing 1.6 miles of new road and improving 1.8 miles of existing road. The 12,800-acre project area is about 30 miles west of the BTA Project and encompasses 815 acres in the Sand Dunes WSA, which BLM has recommended for designation as wilderness. A total of 47 acres of land would be disturbed in the short term by drilling, construction, and related activity, with 23 acres of continuing disturbance during operation and production from the three wells.

In their statement of reasons (SOR) for appeal, Appellants argue that BLM's failure to fully consider the impacts of the projects on the

environment, reasonable alternatives thereto, and a no action alternative constitute a violation of section 102(2)(C) and (E) of NEPA, as amended 42 U.S.C. § 4332(2) (1994). They stress that BLM failed to adequately address the cumulative effects of the projects, together with the "current rapid development of mineral resources in southwestern Wyoming." (SOR at 8.) Thus, Appellants conclude, BLM's Decision should be rejected, and the case remanded for preparation of a programmatic EIS "analyzing the cumulative impacts of all proposed mineral development in southwestern Wyoming." (SOR at 43.)

[1] It is well established that a BLM decision to proceed with a proposed action, absent preparation of an EIS, will be held to comply with section 102(2)(C) of NEPA, if the record demonstrates that BLM has, considering all relevant matters of environmental concern, taken a "hard look" at potential environmental impacts, and made a convincing case that no significant impact will result therefrom, or that such impact will be reduced to insignificance by the adoption of appropriate mitigation measures. See Nez Perce Tribal Executive Committee, 120 IBLA 34, 37-38 (1991) and cases cited. An appellant seeking to overcome such a decision must carry its burden of demonstrating, with objective proof, that BLM failed to adequately consider a substantial environmental question of material significance to the proposed action or otherwise failed to abide by section 102(2)(C) of NEPA. Southern Utah Wilderness Alliance (SUWA), 127 IBLA 331, 350, 100 I.D. 370, 380 (1993) and cases cited.

Moreover, when BLM has complied with the procedural requirements of section 102(2)(C) of NEPA, by actually taking a hard look at all of the environmental impacts of a proposed action, it will be deemed to have complied with the statute, regardless of whether a different substantive decision would have been reached by this Board or a court (in the event of judicial review). Strycker's Bay Neighborhood Council v. Karlen, 444 U.S. 223, 227-28 (1980). As we said in Oregon Natural Resources Council, 116 IBLA 355, 361 n.6 (1990):

> [Section 102(2)(C) of NEPA] does not direct that BLM take any particular action in a given set of circumstances and, specifically, does not prohibit action where environmental degradation will inevitably result. Rather, it merely mandates that whatever action BLM decides upon be initiated only after a full consideration of the environmental impact of such action.

Further, in deciding whether BLM has taken a hard look at the environmental consequences of a proposed action, we will be guided, as in most matters of NEPA compliance, by the "rule of reason," as expressed in Don't Ruin Our Park v. Stone, 802 F. Supp. 1239, 1247-48 (M.D. Pa. 1992):

> An EA need not discuss the merits and drawbacks of the proposal in exhaustive detail. By nature, it is intended to be an overview of environmental concerns, not an exhaustive study of all environmental issues which the project raises. If it were, there would be no distinction between it and an EIS. Because it

> is a preliminary study done to determine whether more in-depth study analysis is required, an EA is necessarily based on "incomplete and uncertain information." Blue Ocean Preservation Society v. Watkins, 767 F.Supp. 1518, 1526 (D. Hawaii 1991) * * *. So long as an EA contains a "'reasonably thorough discussion of . . . significant aspects of the probable environmental consequences,"' NEPA requirements have been satisfied. Sierra Club v. United States Department of Transportation, 664 F.Supp. 1324, 1338 (N.D. Ca. 1987) * * * quoting Trout Unlimited v. Morton, 509 F.2d 1276, 1283 (9th Cir. 1974).

(Footnote deleted.)

We next consider Appellants' specific arguments regarding air quality, wildlife, WSA's, mitigation, tiering, and alternatives.

Air Quality

Appellants contend that BLM failed to consider the direct, indirect, and cumulative impacts to air quality resulting from each of the projects. Appellants argue that BLM did not quantify and evaluate emissions from production activities at the sites of the projects, "despite the fact that those emissions are also substantial and readily quantifiable." (SOR at 18 citing Declaration of Dr. Howard M. Liljestrand.) They also argue that BLM did not assess the air quality and associated impacts of such emissions, despite the fact that such emissions are known to have adverse environmental effects.

The record in this case shows that BLM considered the air quality impacts of both projects during the construction/drilling and production/processing phases of the proposed operations. (BTA EA at 3-11, 4-17 to 4-19; HS EA at 3-2, 4-3, 4.) It concluded that the impacts would not be significant, since no Federal or State ambient air quality standards would be exceeded. (BTA EA at 4-18; HS EA at 4-4.)

In the case of the BTA Project, BLM focused on the cumulative impact within the 4,632-acre project area, an 8-mile radius of the project area, and a 1,200-square mile area surrounding the project area. (BTA EA at 4-2.) It noted that there was no proposed oil and gas development within the project area or within an 8-mile radius of that area. Id. However, it did consider such development to be reasonably foreseeable in the 1,200-square mile area due to expected infill drilling in the Hay Reservoir and Desert Springs oil and gas fields, situated 12 miles to the east and southeast of the project area. Id. at 4-2, 4-4; see BTA DR/FONSI, Appendix A, at 7. BLM also considered the impact of the nearby Bridger Power Plant and Interstate 80. BLM concluded that there would be no significant cumulative impact to air quality, given the geographic isolation of the project from other existing and proposed oil and gas developments and, the fact that the project is expected to have a minimal incremental impact. Id. at 4-19; BTA DR/FONSI at 6, 10.

As to the HS Project, BLM concluded that there would be no significant cumulative impact to air quality from the drilling and operation of three exploration wells, especially since the existing regional air quality was excellent, the impact of the project was expected to be minimal, and no other activity was expected to occur in the vicinity in the foreseeable future. (HS EA at 3-2, 4-4, 4-35, 4-36, 4-38; HS DR/FONSI at 6, Appendix B at 4.)

Appellants correctly note that BLM did not fully quantify the total emissions of pollutants by the proposed drilling of wells and all related activity. However, BLM's professional opinion was that emissions would be so minor that they would not result in a significant individual or cumulative impact, during construction/drilling or subsequent production/processing operations. Appellants have failed to show that opinion to be in error.

Moreover, in order to show the likelihood of cumulative impacts on air quality, it is not enough to simply note that there are many existing and proposed oil and gas and mining projects in southwestern Wyoming. Appellants must demonstrate that, because of geographic proximity and/or other reasons, there is likely to be an interaction between other projects and the proposed project which may result in an enhanced or modified impact that BLM was required to consider. See Kleppe v. Sierra Club, 427 U.S. 390, 409-14 (1976). Appellants have failed to make such a showing.

Wildlife

Appellants contend that BLM failed to adequately consider the impacts of well drilling and related activity on wildlife, including game and nongame species, based on critical and readily available information. They refer to the anticipated impacts to ungulates, particularly elk, caused not only by the loss of forage from surface-disturbing activities, but also by displacement, fragmentation of habitat, added stress to animals, and increased mortality due to loss of habituation to humans. They also refer to expected impacts to sage grouse. Further, Appellants argue that BLM did not consider the cumulative impacts of the BTA and HS projects, and other existing and reasonably foreseeable projects in the area.

The record shows that BLM considered the impacts of the two projects on wildlife, including elk, pronghorn antelope, and mule deer, from drilling/construction and production/processing operations. (BTA EA at 3-22 to 3-28, 4-36 to 4-41; HS EA at 3-16 to 3-21, 4-15 to 4-19.) It also considered cumulative impacts to wildlife. (BTA EA at 4-40 to 4-41; HS EA at 4-42 to 4-44.) BLM concluded that the impacts would not be significant. (BTA EA at 4-39 to 4-40; HS DR/FONSI at 5, Appendix B at 7.) This was particularly true with respect to elk, pronghorn antelope, and mule deer.

BLM concluded that while the HS Project would affect crucial seasonal ranges, the BTA Project (except for part of the proposed gas pipeline) would not. (BTA EA at 3-22 to 3-25; HS EA at 3-16 to 3-17.) The BTA Project pipeline crosses crucial elk winter range, and much of the HS Project

area, which encompasses crucial winter and parturition range for elk and mule deer; however, BLM anticipated little impact since construction/drilling, and thus the time of greatest human activity and displacement of elk, was prohibited during winter and the period of parturition. (BTA EA at 4-38; HS EA at 4-17.) Nor did BLM expect any significant impact in the case of sage grouse, since their spring breeding areas were not located within the project areas, and were not closer than 1/2 mile from an area boundary or 1 mile from any expected project activity. (BTA EA at 3-23, 3-27, 4-39; HS EA at 3-20, 4-18.) Similarly, the cumulative impacts on elk, pronghorn antelope, mule deer, and sage grouse were not expected to be significant. (BTA EA at 4-40 to 4-41; HS EA at 4-42 to 4-43.)

We are not persuaded that BLM failed to address a particular impact to wildlife, either individual or cumulative, or that it did not properly appreciate its significance. Appellants' references to various studies of the general effects of oil and gas exploration and development on elk and other wildlife are not sufficient. They must demonstrate that such impacts are likely to occur in the case of the two projects at issue here, and that those impacts are likely to rise to significance. While Appellants submitted the Declaration of Dr. Stephen C. Torbit, a wildlife ecologist who provided considerable information regarding the general impacts of mineral development on elk and other wildlife species, he failed to show that, as a consequence of the two projects at issue here, there would be any specific impact to wildlife which was not considered by BLM or that BLM did not properly appreciate the significance of the impact.

Appellants also argue that BLM ignored or minimized the concerns expressed by the Wyoming Game and Fish Department (WGFD) and the Fish and Wildlife Service (FWS), U.S. Department of the Interior, who have greater expertise in wildlife management. We disagree. BLM, which is charged with managing wildlife habitat on public lands, does have expertise in wildlife management, and its wildlife specialists participated in the preparation of the EA's. (BTA EA at 5-2; HS EA at 5-2.) Their reasoned expert opinion, based on a firsthand knowledge of the wildlife resources in the project areas, is entitled to considerable deference. See Jon Roush, 112 IBLA 293, 302 (1990) and cases cited. Further, the concerns expressed by WGFD and FWS were considered by BLM. (BTA DR/FONSI, Appendix A, at 16-19; HS DR/FONSI, Appendix B, at 15-17.) The fact that Appellants disagree with BLM's responses to the comments offered by WGFD and FWS does not establish that BLM did not adequately consider the comments, or demonstrate that BLM was wrong in its assessment of those comments or the underlying environmental issues. See Glacier-Two Medicine Alliance, 88 IBLA 133, 141 (1985).

Nor have Appellants demonstrated that any cumulative impact to wildlife is likely to be significant. Thus, we are not persuaded that BLM was required to prepare an EIS in order to properly assess such an impact.

Wilderness Study Areas

Appellants assert that BLM failed to adequately consider the various impacts of drilling and other exploration and development activity contemplated in the two projects on the wilderness and other values in the WSA's.

They note that such activity will occur within a short distance of the WSA's and will be visible within the WSA's for up to 10 years, alleging that this violates the Class II visual resource management standards applicable in WSA's and constitutes a significant impact. Appellants further allege that such activity will adversely affect the air quality in the WSA's, and that an existing access road, which runs through the Sand Dunes WSA, will be improved in connection with the HS Project.

BLM considered the impacts to WSA's in the case of both projects, noting that, with the exception of resurfacing 0.5 miles of existing road in the HS Project area, neither project will result in any construction or other development in any of the WSA's. (BTA EA at 3-8, 4-10 to 4-12, 4-14; HS EA at 2-5, 3-3, 3-31, 4-28.) The two projects were expected to have little or no impact due to the distance from the WSA's to any long-term surface disturbing facility. In the case of the BTA Project, the closest facility (well) would be 0.6 miles from one of the WSA's (East Sand Dunes) and the rest would be over 1 mile from any of the WSA's. (BTA EA at 2-4, 3-8, 4-11 to 4-12.) In the case of the HS Project, the three wells would be over 2 miles from the Sand Dunes WSA. (HS EA at 3-3.) Further, in both cases, the projects would not introduce impacts substantially different than those already audible and/or visible from within the WSA's and/or the project areas would be generally downwind of the WSA's. (BTA EA at 4-11 to 4-12; HS EA at 3-2; Decision at 10.) BLM further concluded that there would be no significant impact to the WSA's since the two projects would not impair the suitability of the WSA's for designation as wilderness. (BTA EA at 4-12; HS EA at 4-28.) Appellants have failed to demonstrate that BLM did not address a specific potential impact or properly appreciate the significance of any impact.

Next, Appellants contend that the activities undertaken in connection with the BTA and HS projects will impair the suitability of the WSA's for designation as wilderness, thus violating section 603(c) of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1782(c) (1994). (SOR at 25-31.) They argue that a violation exists even when activities will take place entirely outside the WSA's.

BLM is required by section 603(c) of FLPMA to manage public lands within a WSA "in a manner so as not to impair the suitability of such areas for preservation as wilderness." 43 U.S.C. § 1782(c) (1994); Committee for Idaho's High Desert, 139 IBLA 251, 253 (1997). With the exception of 815 acres in the HS Project area, none of the public lands at issue here is within a WSA. While BLM applied the nonimpairment standard of section 603(c) of FLPMA for purposes of assessing the significance of impacts of the nearby projects on the WSA's, BLM properly concluded that the non-WSA lands, within the project areas, are not subject to the section 603(c) standard. (BTA EA at 3-5, 4-10 to 4-11; HS EA at 3-31.) Thus, these lands need not be managed so as not to impair the wilderness suitability of the WSA's.

With respect to the 815 acres of WSA land in the HS Project area, Appellants argue that improvement and use of the existing road which runs

through that WSA area will impair the wilderness suitability of the Sand Dunes WSA and thus violate section 603(c) of FLPMA.

Section 603(c) of FLPMA provides for an exception to the nonimpairment standard by allowing the "continuation of existing * * * mineral leasing in the manner and degree in which the same was being conducted on October 21, 1976." 43 U.S.C. § 1782(c) (1994). Such grandfathered uses are allowed to continue even though they would impair the wilderness suitability of the WSA. Committee for Idaho's High Desert, 139 IBLA at 253.

In this case, BLM concluded that under its Interim Management Policy and Guidelines for Lands Under Wilderness Review, the existing road was a grandfathered use under section 603(c) of FLPMA because its use would continue in the same manner and degree as that occurring on October 21, 1976. (HS EA at 4-28.) However, Appellants contend that the anticipated use of the road should not be considered a grandfathered use, asserting that if the lease and well accessed by the road in 1976 are no longer current or in production, "BLM cannot allow a new lessee with a different development to use the road as a `grandfathered' right."

We find no support for Appellants' interpretation of section 603(c) of FLPMA. Under that section, if the road was being used in connection with mineral leasing activities on October 21, 1976, such use may now continue, provided it continues in the same manner and degree as was occurring on that date. All the statute requires is that the use itself be the same in manner and degree. It does not require that the party continuing the use be the party conducting the use on October 21, 1976. Nor does it specify that the use must be for the same development existing on that date. Further, the case law cited by Appellants lends no support to their argument. BLM's interpretation of the grandfather clause comports with such case law. See Rocky Mountain Oil & Gas Association v. Watt, 696 F.2d 734 (10th Cir. 1982).

BLM's conclusion that the permitted use of the road for mineral leasing activities would be of the same manner and degree as was occurring on October 21, 1976, is supported by the record, and Appellants have provided no evidence to the contrary.

Mitigation

Appellants contend that the mitigation measures relied upon by BLM to support its FONSI are legally deficient because they are no more than "mere vague statements of good intentions" and fail to provide effective assurance that the impacts will, in fact, be eliminated or reduced to insignificance. (SOR at 41 (quoting Preservation Coalition, Inc. v. Pierce, 667 F.2d 851, 860-61 (9th Cir. 1982)).) We disagree.

The mitigation measures were spelled out in the environmental review process and will be enforceable by BLM throughout the period of oil and gas exploration and development. (BTA DR/FONSI at 3, Appendix D; HS DR/FONSI at 4, Appendix A.) Appellants have not demonstrated that

nearly every mitigation measure is either qualified or not yet chosen. Appellants are correct that BLM has provided, in the case of the HS Project, that mitigation measures may be waived, at the discretion of the authorized BLM officer. However, BLM provided that it would do so only if "the resource for which the measure was developed would not be impacted." (HS EA at 2-33.) Nor have Appellants demonstrated that BLM's determination that the projects will not have a significant impact hinges on the effectiveness of any mitigation measure or if it does, that BLM has failed to show that such a measure will effectively assure that the impact will be eliminated or reduced to insignificance. (BTA DR/FONSI, Appendix A, at 12; HS DR/FONSI, Appendix B, at 10.)

Tiering

Appellants next contend that, when assessing the cumulative impacts of oil and gas exploration and development in southwestern Wyoming, BLM improperly tiered its EA's to the Draft Green River Resource Management Plan (RMP) EIS and the Southwest Wyoming Resource Evaluation (SWRE). They argue that BLM cannot tier to these documents to support its environmental analysis, because the draft Green River RMP EIS and SWRE were not finalized at the time of the July and August 1995 DR/FONSI's at issue here, and the SWRE was not a NEPA document.

Tiering is a procedure permitted by the regulations implementing section 102(2)(C) of NEPA, whereby an analysis of environmental issues found in an agency's broad EIS on a program or policy is incorporated by reference by that agency into a subsequent EIS or EA "on an action included within the entire program or policy (such as a site specific action)." 40 C.F.R. § 1502.20; see 40 C.F.R. § 1508.28; e.g., SUWA, 123 IBLA 302, 305-06 (1992). Agencies are encouraged to do so in order "to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review." 40 C.F.R. § 1502.20.

The record indicates that BLM did not rely on the analysis of any environmental impact in any EIS or other document in the course of its consideration of the specific impacts of the two natural gas projects at issue here. Nor did it rely on such analysis to form the analytical basis for its determination that any impact of these projects, either individual or cumulative, will not be significant. The Deputy State Director made no reference to such reliance in his October 1995 Decision; instead, he stated: "The analyses in the EAs are used to make the decisions." See Decision at 3, 12. Nowhere in either the BTA or HS EA did BLM incorporate, either expressly or implicitly, any environmental impact analysis in either the Draft Green River RMP EIS or SWRE. Thus, we find that BLM did not tier to either document.

Moreover, Appellants have not demonstrated that BLM was required by section 102(2)(C) of NEPA to await completion of the Green River RMP EIS or SWRE before it could go forward with the BTA and HS projects.

Alternatives

Appellants next contend that BLM failed to consider reasonable alternatives to the two proposed projects which would have less adverse impacts on the environment, including staggered development and directional drilling of multiple wells from existing well pads. They also argue that BLM failed to consider a true no action alternative.

BLM is required by section 102(2)(E) of NEPA, 42 U.S.C. § 4332(2)(E) (1994), and its implementing regulations to consider reasonable alternatives to a proposed action, which will accomplish its intended purpose and with a lesser or no impact. 40 C.F.R. §§ 1501.2, 1502.14, and 1508.9. This includes the no action alternative. 40 C.F.R. § 1502.14(d). In the end, BLM must ensure that the decisionmaker "has before him and takes into proper account all possible approaches to a particular project." Calvert Cliffs' Coordinating Committee v. United States Atomic Energy Commission, 449 F.2d 1109, 1114 (D.C. Cir. 1971). However, as the court stated in Headwaters v. BLM, 914 F.2d 1174, 1180 (9th Cir. 1990), "NEPA does not require a separate analysis of alternatives which are not significantly distinguishable from alternatives actually considered, or which have substantially similar consequences."

We are not persuaded that BLM failed to consider reasonable alternatives to the two proposed actions.

BLM concluded that directional drilling was not a reasonable alternative since it was uneconomic and infeasible. (BTA DR/FONSI, Appendix A, at 5-6; HS DR/FONSI, Appendix B, at 7.) It explained that, since neither project area is an established production area where the characteristics of the natural gas reservoir are known and well-defined, the proposed drilling is intended to delineate the reservoir and its production capabilities, and ultimately determine whether there is, in fact, a reasonable chance it can be successfully produced by full field development. (BTA DR/FONSI, Appendix A, at 5.) BLM noted that directional drilling could not, from a technological and an economic standpoint, reasonably accomplish that particular purpose, owing to the great distances between the wells to be drilled. Id.

Appellants argue that BLM's failure to explain the basis for this conclusion, including the information it relied upon and its analysis, was violative of the disclosure requirements of section 102(2)(C) of NEPA. (SOR at 34.) We agree that BLM did not set forth the specific basis for its conclusion that directional drilling would be uneconomic and infeasible. However, it did offer its expert opinion, which is sufficient in the absence of contrary evidence from Appellants.

With respect to the alternative of staggered development in the case of the HS Project, the proposed action already provided for staggered development, since the drilling of two of the three wells was entirely dependent on the success of the first well. In the case of the BTA Project BLM did not address this alternative, but Appellants have not demonstrated

that the alternative of staggered development would have a lesser impact than that considered by BLM.

Appellants also argue that BLM may not choose to not consider an alternative simply because it may cost more. That is not what BLM did here. Rather, BLM chose not to consider the option of directional drilling since, owing to technological and economic limitations, it would not reasonably accomplish one of the purposes sought to be achieved by the proposed actions, i.e., delineating the underlying natural gas resource. See Friends of the Bow, 139 IBLA 141, 150 (1997).

Next, Appellants assert that BLM never addressed a no action alternative because BLM believed that it could not curtail all exploration and development activity in connection with Federal oil and gas leases. BLM did note that it could not preclude all exploration and development under the various Federal leases involved in the BTA and HS projects. (BTA EA at 2-30 to 2-31; HS EA at 2-38 to 2-40.) This is correct. At the time of lease issuance, BLM did not retain the authority to preclude all such surface-disturbing activity. See Sierra Club v. Peterson, 717 F.2d 1409, 1411, 1414 n.7 (D.C. Cir. 1983). Thus, it could only restrict the manner and pace of exploration and development. See Powder River Basin Resource Council, 120 IBLA 47, 54-55 (1991). However, the fact that BLM did not retain that authority does not render the leases automatically invalid. Nor will we intercede at this point to rule on the validity of the leases. That issue is administratively final for the Department. See SUWA, 122 IBLA 165, 171-72 (1992). However, even though it recognized the ultimate limitation on its authority to curtail all oil and gas activity, BLM clearly did consider the various impacts which would result from implementation of a no action alternative. This complied with NEPA. See Western Colorado Congress, 130 IBLA 244, 248 (1994).

In summary, we find that the record establishes that preparation of an EIS is not required in this case because BLM has, considering all relevant matters of environmental concern, taken a hard look at potential environmental impacts of the projects and reasonable alternatives thereto, and has made a convincing case that no significant impact will result therefrom. See Nez Perce Tribal Executive Committee, 120 IBLA at 37-38. We also find that Appellants have not carried their burden to demonstrate, with objective proof, that BLM failed to adequately consider a substantial environmental problem of material significance to the proposed actions or otherwise failed to abide by section 102(2)(C) of NEPA. See SUWA, 127 IBLA at 350, 100 I.D. at 380 and cases cited.

Therefore, we conclude that the Deputy State Director's Decision of October 6, 1995, was proper and must be affirmed. To the extent Appellants have raised other arguments not expressly addressed herein, they have been considered and rejected.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

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John H. Kelly
Administrative Judge

I concur:

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R.W. Mullen
Administrative Judge